**THE HON'BLE SRI JUSTICE BILAL NAZKI**
**AND**
**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.19254 of 2007**

ORDER: (per THE HON'BLE SRI JUSTICE BILAL NAZKI)

**DATE : 17-9-2007**

**Between:**
M/s. Pavani Engineers
Rep. by its Partner,
Secunderabad … Petitioner

And

The Commercial Tax Officer,
Ranigunj Circle,
Hyderabad … Respondents

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A notice was served on the petitioner after assessment in Form VAT 305. At the penultimate paragraph of the notice, the Commercial Tax Officer asked the dealer-petitioner to pay the demanded amount within 14 days of the receipt of the order and also informed him that failure to make the payment would result in recovery proceedings under the A.P. VAT Act, 2005. This stipulation in the impugned notice is challenged in the writ petition.

On the last occasion, when the writ petition came before this Court, time was sought for by the Learned Government Pleader to get instructions. We have heard the Learned Counsel for the parties and with their consent the writ petition is disposed of at this stage.

The Learned Counsel for the petitioner submits that in view of Section 22 of the VAT Act recovery after assessment has to be made on the basis of the notice contained in Form VAT 305 and this form prescribes that the demanded amount shall be payable within 30 days of the order communicated in Form VAT 305. Since the form is a result of statutory exercise of power, the Commercial Tax Officer could not

restrict the time for payment from 30 days to 14 days. The Learned Government Pleader submits that the Form has to be read along with Rule 25(5). There is no doubt about that, because even Form VAT 305 mentions "see Rule 25(5)" and Rule 25 (5) lays down:

"Where any VAT return filed by the VAT dealer appears to the authority prescribed to be incorrect or incomplete that authority prescribed shall assess the tax payable to the best of his judgment on Form VAT 305 after affording a reasonable opportunity to the dealer in Form VAT 305 A. He shall serve upon the VAT dealer an order of the tax assessed, the penalty and interest due on form VAT 305. The VAT dealer shall pay the sum within the time and manner specified on the notice."

The Learned Government Pleader wants us to hold that this Rule gives discretion to the Commercial Tax Officer to fix time within which the amount demanded, under Form VAT 305, shall be paid. We are not able to agree to such an interpretation being placed, because the Rule mentions that the dealer shall pay the sum within the time and manner specified on the notice. The Form itself contains the time as 30 days. Therefore, there is no discretion left with the Commercial Tax Officer and 30 days time from the date of receipt of the order, contained in the notice, has to be given to the dealer. Therefore, the notice impugned is set aside to the extent it had given 14 days time to make payment and we hold that it should be read as 30 days instead of 14 days. No order as to costs.

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Date:17-9-2007 BILAL NAZKI,J

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RAMESH RANGANATHAN,J